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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,635	07/31/2001	Seiji Kobayashi	2001_1083A	1587

513 7590 06/27/2005

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 WASHINGTON, DC 20006-1021

EXAMINER
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GRAYSAY, TAMARA L

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/917,635

Applicant(s)

KOBAYASHI, SEIJI

Examiner

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because of the following:
  - a. The formulas (Calculation 1 and Calaculation2) shown in Figure 2 are inconsistent with the formulas 1-8 presented in the specification.
  - b. They fail to comply with 37 CFR 1.84(p)(3) because the reference characters are not at least .32cm (1/8 inch) in height.
  - c. To aid in understanding the invention, reference characters may be added to the drawings and specification. For example, the "SENIORITY-WISE" check mentioned at page 10, line 6 is not depicted in Figure 2; "REFERENCE VALUE Kj" mentioned at page 10, line 17 is depicted as reference allowance Kj.
  - d. Figures 3-8 should be revised to clarify the particular value that is depicted. For example, in Figure 3, the valuation mark Tj is depicted, however, all of the values at the top of the figure appear to be the same. Perhaps the Tj is highlighted, but the highlight is not discernable.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

2. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

3. The disclosure is objected to because of the following informalities:

- The abstract should be a single paragraph.
- PRECEDING is misspelled at page 11, line 16.

Appropriate correction is required.

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4. A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-3 recite, "An allowance calculation program" without reference to any particular process steps or structure. A broad and reasonable interpretation of the claims is that it merely recites the computer program that performs allowance calculations. The computer program, as claimed is nonstatutory. However, it may be statutory if it were embodied on a computer-readable media encoded with a computer program that defines a structural and functional interrelationship between the program and the computer thereby permitting computer functionality to be realized (or as part of a statutory manufacture or machine). New matter should not be added.

Claim 4 recites, "An allowance calculation program" at the preamble, however, the body of the claim includes a personal computer programmed with certain functionality. A broad and reasonable interpretation of the claim is that it is limited to the computer program that performs the allowance calculation. Although the claim includes "means" the means are nothing more than algorithms or computer program software that includes a practical application of calculating

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an allowance, however, the claimed subject matter is not within the technological arts. The recitation of “the personal computer” at line 6 is merely setting forth the element that is included in the statement of intended use in the preamble, and not a positive recitation of the computer or the computer in combination with the functionality intended to perform the process.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with terminology that lacks antecedent basis and unduly broad terminology. For example, “the calculation of allowance” at claim 1, line 3, “such as” at claim 1, line 4, “the wage base” at claim 1, line 4, “the bonus” at claim 1, line 4, “the annual salary” at claim 1, line 4, “and so forth” at claim 1, line 5, “the total allowance” at claim 1, line 5, “such as” at claim 1, line 7, “the same job classes and job kinds” at claim 1, line 7, etc.

Applicant is advised to submit amended claims. See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on a separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP 608.01(i)-(p).

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*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Britt (article, Designing a performance-based compensation plan).

Kobayashi (JP-10097568-A) teaches an adjustment calculation applied to a personnel rating point system. The adjustment calculation formula that takes into consideration past bonuses (Zj) and ability of a person (j) before a salary adjustment is gradually made using an adjustment (Xc). The claimed "allowance" to be paid is met by the salary increase. The allowance is displayed as depicted in figures 2-9.

Britt teaches changing a compensation structure over a two to four year period rather than overnight in order to allow for employee education and acceptance. Britt further teaches the relationship of value to an organization being tied to incentive compensation, i.e., volume targets for sales-related employees, increased production for loan processor, etc.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kobayashi to apply the gradual adjustment calculation principle to the adjustment of bonuses such as taught Britt, in order to allow time for employee education and experience.

Regarding claim 4, the number of calculation means or order in which values or products are obtained is a matter of design choice within the level of ordinary skill in the operations research art.

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Graham (article, Managing new pay program introduction to enhance the competitiveness of multinational corporations) teaches payment of bonuses when a business unit, division, and corporation performance goals are met (P.137); treating employees consistently regarding pay and ensuring that employees perceive pay programs as fair (P.138); employees consider the details of the pay program (e.g., bonus formula) when judging fairness of a pay program (P.138); high quality interpersonal treatment, such as communications accompanying new pay programs, can convey the value of cultural norms to organization (p.139); forms of pay include cash, benefits and bonuses (P.141); a firms' historical emphasis on seniority-based pay is taken into consideration when developing a performance plan for a multinational corporation (P.142); firms should fully communicate details and goals of new pay program (P.142); a firm's administrative heritage may constrain a quick change to a new pay program (P.144);organizational justice theory is used to provide direction for firms that have a mismatch between a current, mismatched pay program a preferred pay program (P.146); interactional justice communicating the new pay program are important and can smooth the transition from a previous pay program to a new pay program (P.148).
- Leavitt (text, Managerial psychology) teaches various pay programs to improve or compensate for performance.

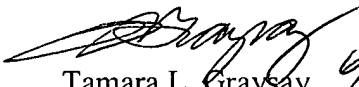


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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (571) 272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 6/21/05  
Tamara L. Graysay  
Examiner  
Art Unit 3623

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